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CHARLES ELMORE PRO  
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**In the  
Supreme Court of the United States**

**OCTOBER TERM, 1945**

No. **1007-1008**

**IN BANKRUPTCY**

MICHAEL P. JORDAN,

*Petitioner,*

vs.

FEDERAL FARM MORTGAGE CORPORATION, et al,

*Respondents.*

**RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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**OPINIONS BELOW**

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (Tr. pp. 8-12) is reported in 152 Fed. (2) 642. Opinions in a former attempted bank-

ruptcy by the same petitioner (but for which no writ of certiorari was ever sought) are found in 139 Fed. (2) 203, and in 48 Fed. Supp. 889.

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### **ARGUMENT**

It will appear at the outset that petitioner must be seeking two writs of certiorari, although petitioner (p. 7 of his petition) prays for only one writ directed to the Circuit Court of Appeals, Eighth Circuit "in the above entitled cause, being numbers 13,117 and 13,194," we shall consider the two matters separately.

#### **Petition for Writ to Circuit Court of Appeals, Eighth Circuit—Docket No. 13,117**

In this case petitioner has presumably filed with the court a certified transcript of the record, including the proceedings in the court to which the writ is asked to be directed, and petitioner has served upon at least the respondents, Stock Yards National Bank of South Omaha, A. L. Johnson and John W. Drayton, one copy of the printed record, by sending one copy to the attorney for those respondents.

Respondent cannot accept petitioner's statement of matters involved. A brief summary is as follows: Petitioner, a resident of Cherry County, Nebraska, whose 10,000-acre ranch was being foreclosed by respondent Stock Yards National Bank of South Omaha filed his debtor's petition in the District of Nebraska in 1942 as a farmer under Section 75 of the Bankruptcy Act. The

Conciliation Commissioner, the district court, and the Circuit Court of Appeals, Eighth Circuit, successively held that petitioner was not a farmer and dismissed the petition. See *In re Jordan*, 48 Fed. Supp. 889, and *Jordan v. Federal Land Bank of Omaha* (8th Circ.), 139 Fed. (2) 203.

Thereafter the foreclosure proceeded in the Nebraska state court with a sheriff's sale April 7, 1944, confirmation December 7, 1944, issuance of sheriff's deed January 3, 1945, and deed recorded January 4, 1945 (Tr. p. 18). This ended petitioner's interest in the Cherry County Nebraska ranch.

Thereafter petitioner entered into contracts for the purchase of three Iowa farms in the hope (as he states in his C. C. A. brief) that he might resell the same at a profit, and immediately rented them to tenants for the 1945 crop year. He owned no farm machinery nor equipment in Iowa. He never intended to take any part in the operation of the farms, nor did he ever visit the farms. (Opinion of Judge Riddick, 152 Fed. (2) 642; Tr. p. 10 of Circuit Court of Appeals proceedings.)

After losing all interest in his former land in Nebraska, petitioner again filed a debtor's petition in the Southern District of Iowa, Southern Division, on March 20, 1945, as a farmer under Section 75 of the Bankruptcy Act. This petition was dismissed by District Judge Dewey, which action was affirmed by the Circuit Court of Appeals (152 Fed. (2) 642).

This is not a proper case for writ of certiorari. The decision is in accord with the Supreme Court of the United States in *First Natl. Bank & Trust Co. v. Beach*,

301 U. S. 435. The decision does not differ from those of other circuits on the same matter, and the decision is in perfect harmony with *Shyvers v. Security-First Natl. Bank* (9th Cir.), 108 Fed. (2) 611, wherein this court denied certiorari in 309 U. S. 668, and with *Mulligan v. Federal Land Bank of Omaha* (8th Circ.), 129 Fed. (2) 438.

Contrary to statements in the petitioner's brief, the following matters are clear from the record:

1. The record is silent on the amount of interest on the mortgage. Petitioner's statement of 12% is irrelevant to be sure, but is also a misstatement of a fact outside the record.
2. In his brief, p. 10, petitioner states "he has applied all rentals on indebtedness against his ranch," but he does not refer to the record for authority, as he could find no support for such an erroneous statement.
3. The record, pp. 1 to 7 of Appellee's Supplement to Abstract of Record, shows conclusively that petitioner rented his ranch in 1942 for \$4,000.00 cash, in 1943 for \$4,000.00 cash, and in 1944 part of the ranch for \$4,000.00 cash, with a claim by petitioner for additional rent for the balance. In no one of these three years was there any creditor pressing petitioner for which cause it could be said he leased the ranch. In 1941 he may have leased his ranch partly to secure money to pay an outside judgment creditor not involved in this action, but for the three subsequent years he had no occupation or employment and merely enjoyed his landlord receipts. Thus, this opinion is in accord with the opinion in the *Beach case* in this court, and with the *Shyvers case* of the 9th Circuit, from which

this court denied certiorari. These cases all deal with the "same matter," to wit, the definition of a farmer under Section 75-r of the Bankruptcy Act, and even petitioner does not point out in his brief any conflicting decisions of other circuits.

**Petition for Writ to Circuit Court of Appeals, Eighth Circuit—Docket No. 13,194**

As far as respondent knows there has not been filed a "certified transcript of the record including the proceedings in the court to which the writ is asked to be directed." The respondent has been served only with a printed "so-called transcript," which contains purportedly a motion for rehearing filed in the District Court for the Southern District of Iowa, Southern Division, a ruling on the motion, and a notice of appeal, all without any certificate of any clerk whatever. There is no mention anywhere of any proceedings in the Circuit Court of Appeals. The transcript for the other petition for writ (13,117 in the Circuit Court of Appeals) contains an opinion by Judge Riddick which is labeled "Nos. 13,117 and 13,194" and which seemingly deals with both appeals, but there is no other indication that there ever was an appeal to the Circuit Court of Appeals in No. 13,194, and there is no indication of what happened to the appeal in the Circuit Court of Appeals.

This alone should preclude the issuance of a writ of certiorari. However, even if a proper record and service were prepared, there is no suggestion of a ground for the issuance of a writ under Rule 38 (5) of this court. The "matter involved" is best explained by quoting from the opinion of Judge Riddick:

"Little need be said concerning the debtor's appeal from the order of the District Court denying his motion for a new trial. An order overruling a motion for a new trial is not appealable in the absence of a showing of an abuse of discretion on the part of the trial court. Not only is there no showing of an abuse of discretion upon the part of the trial court, but it also appears that the motion was not presented to the trial court until long after the appeal from the order dismissing appellant's petition under section 75 of the Bankruptcy Act had been taken and the appeal to this court perfected. The general rule is that after appeal from the District Court to the Circuit Court of Appeals has been perfected the District Court loses jurisdiction of the cause."

Respectfully submitted,

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